

N.D.A.G. Letter to Lundberg (Oct. 11, 1985)

October 11, 1985

Ms. Jane M. Lundberg
Commissioner
Department of Banking and
Financial Institutions
State Capitol
Bismarck, ND 58505

Dear Commissioner Lundberg:

Thank you for your letter of October 1, 1985, concerning a conflict involving N.D.C.C. § 6-01-04.2 and Ch. 28-32, the Administrative Agencies Practice Act.

Whenever a general provision of a statute is in conflict with a special provision in the same or another statute, the two must be construed, if possible, so that effect may be given to both provisions. But, if the conflict between the two provisions is irreconcilable, the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that the general provision should prevail. N.D.C.C. § 1-02-07.

N.D.C.C. § 6-01-04.2(2) was passed by the 1985 Legislative Assembly to provide a specific procedure for administrative complaints concerning unsafe or unsound banking practices and to provide for cease and desist authority. It was undoubtedly passed to be construed as a specific exception to the general provisions of the Administrative Agencies Practice Act.

Therefore, the thirty-day notice time period of N.D.C.C. § 6-01-04.2(2) is appropriate for complaints alleging an unsound or unsafe practice or a violation of law, regulation, board order, or written agreement with the board and seeking invocation of a cease and desist order.

Sincerely,

Nicholas J. Spaeth

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